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ADMINISTRATIVE LAW BULLETIN

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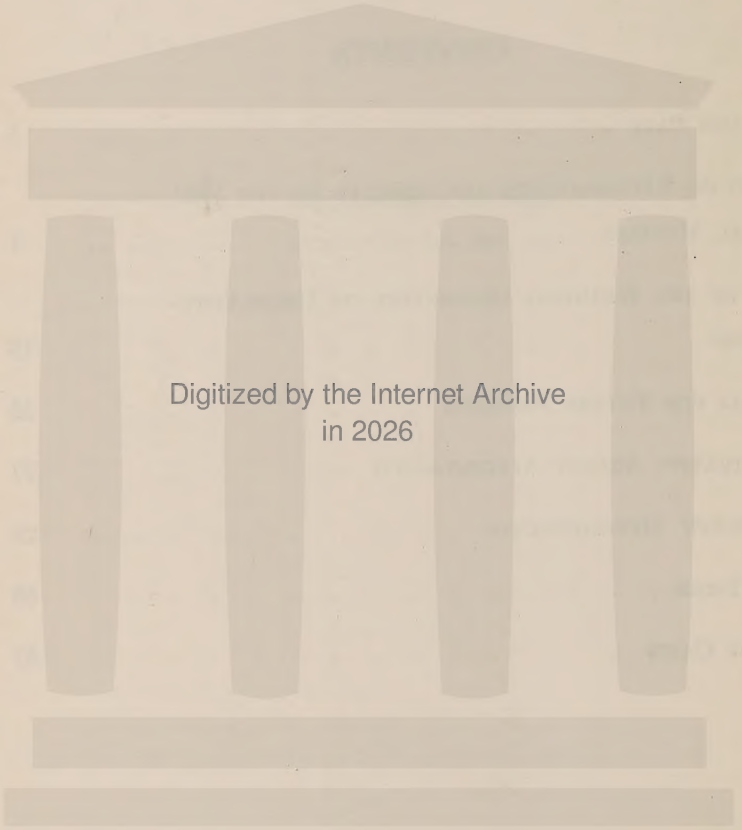
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CHAIRMAN'S PAGE

To All Section Members:

This is your "new look" *Bulletin*. It has been conformed to standard American Bar Association size and format.* We hope you like it, or will learn to. This Volume 10, as heretofore, will be published in four issues: Fall, Winter, Spring, and Summer. For convenient reference, the inside cover shows the structure of the Section organization: Officers, Council Members, and Committees. An index of the first nine volumes of the *Bulletin* is included in this issue.

The contents of the *Bulletin* continue substantially the same, but with hoped-for improvements to make this publication more useful to Section members. This is your publication. It is the principal expense item of the Section. We not only welcome but earnestly solicit your suggestions for improvements in the *Bulletin*. We want to know what are your problems in dealing with administrative agencies? Our Section should have a substanial "bread and butter" appeal to members as demonstrated by the fact that at the federal level most of the laws which are being written and most of the cases which are being decided of concern to most people throughout the country are the output of administrative agencies.

Since Section work originates at the Committee level, members are encouraged to communicate directly with Committee Chairmen on any Section matters. Committee membership designation is the result of the coordinated effort of Committee Chairmen, Council Members, and Officers, but even under the best of conditions, it is quite arbitrary for anyone to make Committee selections from a membership of nearly 2,000. If you are interested in contributing to the work of any particular Committee, please make your interest known to the Chairman of the Committee, or you may communicate with any Council Member or the Section Chairman.

How can you help? Although Section members, in past years, have responded generously to appeals for voluntary contributions,

* Standard binders are available from American Bar Association Headquarters.

we plan this year to live within the budget. In lieu of any appeal for a contribution, *will you help by getting one new member who is interested in administrative law activities?* An application blank is included in this *Bulletin.*

Please note the following principal Section events on your calendar:

1. Midyear Council Meeting to be held in Atlanta, Georgia, Saturday and Sunday, February 22nd and 23rd, 1958. (Attendance of Committee Chairmen and Section members is invited.)

2. Annual Meeting, Los Angeles, beginning Saturday, August 23rd, and running through Tuesday, August 26th, 1958.

3. Other events to be announced later.

From all indications, this gives promise of being a very significant year in the further development of administrative practice and procedure matters, and we are looking forward to the active interest and participation of all Section members.

DONALD C. BEELAR
Section Chairman.

RESOLUTIONS RECOMMENDED BY THE COUNCIL AT THE 1957 ANNUAL MEETING

The Council recommended that the Section adopt the following resolutions:

Aviation Committee

Resolved, On consideration of Recommendations Nos. 1 and 2 of the Committee on Aviation, that the problem of eliminating improper pressures on the decisions of administrative agencies by the Legislative and Executive Branches of the Government and by private interests, and the method by which the Association can best accomplish that end, be referred for further study, and report to the Council at its next meeting, to the Committee on Aviation, the Committee on Improvement of Administrative Procedure and the Committee for the Establishment of Congressional Committees on Administrative Procedure, with authority also to the Chairman of the Section to coordinate such study within the Section, and with such other committees and sections of the Association, as he deems appropriate.

Resolved, That, subject to coordination by the Council with the Association's Committee on Aeronautical Law, and as the Council may recommend in the light of such coordination, the Section of Administrative Law recommend the adoption by the American Bar Association of the following resolution:

> *Resolved,* That the American Bar Association supports enactment by Congress of legislation consistent with the principles of section 1 of S. 1423, 85th Cong., to eliminate Presidential review of decisions of the Civil Aeronautics Board in matters of overseas air transportation and air transportation between places in the same Territory or Possession, and to require the President to report to the Congress the specific national-defense or foreign-policy considerations upon which the Executive overrides Civil Aeronautics Board decisions in other cases involving foreign air transportation unless such disclosure would be contrary to defense or foreign-policy interests.

Resolved, That the Section of Administrative Law recommends to the House of Delegates that the Association recommend the further amendment to Section 801 of the Civil Aeronautics Act, so as to require in cases subject to the approval of the President under Section 801 that the Civil Aeronautics Board issue its decisions (recommenda-

tions) at the time its decisions (recommendations) are forwarded to the President for approval.

Resolved, That the Section approve the objectives embodied in Resolution No. 5, but that the matter be referred to the Aviation and Judicial Review Committees of the Section for further study and report which must be presented to the Council in time for action prior to the mid-year meeting, also subject to the Council's effecting appropriate coordination with the ABA's Aeronautical Law Committee.

Immigration and Nationality Committee

Resolved, That the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

> WHEREAS, Recent decisions of the Supreme Court of the United States have clarified questions of judicial review under the immigration and nationality laws of the United States, and have construed Section 10 of the Administrative Procedure Act as applicable to deportation and exclusion orders under said laws, and
>
> WHEREAS, Legislation has been introduced in the Congress to restrict judicial review of deportation and exclusion orders under said laws,
>
> *Be It Resolved,* That the American Bar Association favors judicial review of deportation and exclusion orders under the immigration and nationality laws of the United States and opposes legislation designed to restrict judicial review of such orders.

Resolved, That the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

> WHEREAS, The Board of Immigration Appeals of the Department of Justice is established by regulation only, with no statutory assurance of either its existence or jurisdiction,
>
> *Be It Resolved,* That it is the opinion of the American Bar Association that the Board of Immigration Appeals of the Department of Justice be granted statutory status and authority and that the Section of Administrative Law be authorized and directed to advance appropriate legislation to that end.

Administrative Procedure Act Committee

Resolved, That the recommendation of the Administrative Procedure Act Committee be referred back to that Committee for further study, with particular emphasis upon the language of the proposed legislation, and for a report to the Council at the next meeting of the Council.

Judicial Review Committee

Resolved, That the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

> *Be It Resolved,* That the American Bar Association supports the enactment of H.R. 272, 85th Cong., 1st Sess., a bill to permit judicial review of decisions of the Administrator of Veterans' Affairs, with a recommended amendment which would substitute review in the appropriate United States District Court for Review in the appropriate Circuit Court of Appeals and that it authorize the Section of Administrative Law to appear before the committees of Congress and to take such other steps as it deems appropriate to carry out this resolution.

Resolved, That Recommendation No. 3 of the Judicial Review Committee be referred back to that committee for further study and a later report to the Council.

RESOLUTIONS ADOPTED BY THE SECTION OF ADMINISTRATIVE LAW

Aviation

Resolved, On consideration of Recommendations Nos. 1 and 2 of the Committee on Aviation, that the problem of eliminating improper pressures on the decisions of administrative agencies by the Legislative and Executive Branches of the Government and by private interests, and the method by which the Association can best accomplish that end, be referred for further study, and report to the Council, to the Committee on Aviation, the Committee on Improvement of Administrative Procedures and the Committee for the Establishment of Congressional Committees on Administrative Procedure, with authority also to the Chairman of the Section to coordinate such study within the Section with such other committees and sections of the Association as he deems appropriate.

Resolved, Subject to coordination by the Council with the Association's Committee on Aeronautical Law, and as the Council may recommend in the light of such coordination, the Section of Administrative Law recommends the adoption by the American Bar Association of the following Resolution:

> *Resolved,* That the American Bar Association supports enactment by Congress of legislation consistent with the principles of section 1 of S. 1423, 85th Cong.

Resolved, Subject to coordination by the Council with the Association's Committee on Aeronautical Law, and as the Council may recommend in the light of such coordination, the Section of Administrative Law recommends the adoption by the American Bar Association of the following Resolution:

> *Resolved,* That the Section of Administrative Law recommends to the Association the further amendment to Section 801 of the Civil Aeronautics Act, so as to require in cases subject to the approval of the President under Section 801 that the Civil Aeronautics Board issue and serve upon the parties its decisions (recommendations) at the time its decisions (recommendations) are forwarded to the President for approval.

Resolved, That the Section approves the objectives embodied in Resolution No. 5 but that the matter be referred to the Aviation and Judicial Review Committees of the Section for further study and report which must be presented to the Council in time for action prior to the mid-year meeting, also subject to the Council's effecting appropriate coordination with the ABA's Aeronautical Law Committee.

Immigration and Nationality

Resolved, That the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

> WHEREAS, Recent decisions of the Supreme Court of the United States have construed Section 10 of the Administrative Procedure Act as applicable to deportation and exclusion orders under the Immigration and Nationality laws of the United States; and
>
> WHEREAS, Legislation has been introduced in the Congress to restrict judicial review of deportation and exclusion orders under said laws,
>
> *Be It Resolved,* That the American Bar Association favors judicial review, under Section 10 of the Administrative Procedure Act, of deportation and exclusion orders under the Immigration and Nationality laws of the United States and opposes legislation designed to restrict judicial review of such orders.

Resolved, That the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

> WHEREAS, The Board of Immigration Appeals of the Department of Justice is established by regulation only, with no statutory assurance of either its existence or jurisdiction,
>
> *Be It Resolved,* That it is the opinion of the American Bar Association that the Board of Immigration Appeals of the De-

partment of Justice be granted statutory status and authority, and that the Section of Administrative Law be authorized and directed to advance appropriate legislation to that end.

Labor

Resolved, That the Section of Administrative Law recommends the adoption by the House of Delegates of the following Resolution:

WHEREAS, The Supreme Court of the United States has held, in effect, that in any labor dispute affecting interstate commerce, neither a state court nor a state administrative agency has jurisdiction to entertain the dispute even though the National Labor Relations Board declines to assert jurisdiction over the dispute on the ground that the effect on interstate commerce is insubstantial; and

WHEREAS, The National Labor Relations Board has established jurisdictional standards for declining to assert jurisdiction in labor disputes when the effect on interstate commerce is insubstantial, which jurisdictional standards are published and available to the general public; and

WHEREAS, By reason of the administrative inaction of the National Labor Relations Board, no remedy whatever is now available to either employers or employees who suffer injury in this situation under the provisions of either state or federal law; and

WHEREAS, It is contrary to established principles of Anglo-American jurisprudence that persons should suffer injury under existing provisions of law yet be without a remedy;

NOW, THEREFORE, be it

Resolved, That the American Bar Association supports the enactment of legislation or the taking of appropriate administrative action which will provide a remedy for the administrative inaction of the National Labor Relations Board described.

Administrative Procedure Act

Resolved, That the recommendation of the Administrative Procedure Act Committee be referred back to that Committee for further study, with particular emphasis upon the language of the proposed legislation, and for a report to the Council at the next meeting of the Council.

Judicial Review

Resolved, That the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

Be It Resolved, That the American Bar Association supports the enactment of H.R. 272, 85th Cong., 1st Sess., a bill to permit

judicial review of decisions of the Administrator of Veterans' Affairs, with a recommended amendment which would substitute review in the appropriate United States District Court for review in the appropriate Circuit Court of Appeals and that it authorizes the Section of Administrative Law to appear before the Committees of Congress and to take such other steps as it deems appropriate to carry out this resolution.

Resolved, That Recommendation 3 of the Judicial Review Committee be referred back to that committee for further study and coordination with Standing Committee on Civil Service and a later report to the Council.

Amendment of By-Laws

Resolved, That Articles III, IV, and VI of the By-Laws of the Section of Administrative Law be amended in the following respects:

Article III, Section 3 is amended to read as follows:

Section 3. As used in Articles III, IV, and VI of these By-laws a year shall be deemed to commence at the close of the annual meeting of the American Bar Association and to end at the close of the next annual meeting. The Chairman, Vice-Chairman, and Secretary shall be nominated and elected each year in the manner hereinafter provided, and shall hold office for a term of one year. The Section Delegate shall be nominated and elected each even-numbered calendar year and shall hold office for a term of two years.

Article III, Section 4 is amended to read as follows:

Section 4. At each annual meeting four members of the Council shall be nominated and elected for terms of three years; in addition, there shall be nominated and elected a Council member to fill each existing vacancy who shall serve during the remainder of the term of such vacant position.

Article III, Section 5 is amended to read as follows:

Section 5. No person shall be eligible for nomination or election as an officer, Section Delegate, or a member of the Council unless he shall have been a member of the Section throughout the year in which the election is held. No member of the Council who is serving as an elected member and has served as such continuously for a period of three years shall be eligible for re-election as a member of the Council.

Article III, Section 6 IS REPEALED.

Article IV, Section 1 is amended to read as follows:

Section 1. At a time not later than the close of the mid-year meeting the Chairman, after consultation with the Council, shall appoint a Nominating Committee of three members of the Section who are not members of the Council, and he shall promptly thereafter announce the names of the members of the Committee in the Administrative Law Bulletin, or by other publication to Section members. The Chairman shall appoint a member to fill any vacancy that may arise thereafter in the Nominating Committee; a vacancy shall be deemed to exist for any Nominating Committee member who is not present at the annual meeting. The Nominating Committee shall make and report one nomination for each position which is to be filled by election at the annual meeting as provided in Article III of these By-laws. The report shall identify each nominee and shall include a brief statement of his activities in the Section and in the law profession generally. The Committee shall submit its report to the Chairman of the Section who shall cause it to be published in the Administrative Law Bulletin, or otherwise published to Section members, prior to the annual meeting. The Nominating Committee shall supplement its published report and action by making one nomination for each unanticipated vacancy, if any, that may arise prior to the beginning of the annual meeting of the Section. At the commencement of the first session of the annual meeting of the Section, the Section Chairman shall orally announce the report of the Nominating Committee, and, after a reasonable interval to be then fixed and announced by the Chairman, before the conclusion of that session, additional nominations for any specified position may be made from the floor; the nominator shall briefly identify the nominee as above provided with respect to the report of the Nominating Committee. Seconds to such nominations shall not be permitted. The Chairman shall then announce the time and place when the election will be held in conformity with Section 2 of this Article.

Article IV, Section 2 is amended to read as follows:

Section 2. All elections shall be held at the last session of the annual meeting and elections for contested positions shall be by written ballot unless otherwise ordered by unanimous consent of the Section members present. Each position to be filled by election shall be voted upon separately. Election shall be by a majority of the votes cast, and a runoff election to choose between the two leading candidates shall be held if a majority vote is not initially obtained.

The Title of Article VI is amended to read as follows:

Duties and Powers of the Council; Meetings.

Article VI, Section 3 is amended to read as follows:

Section 3. The Council during the interim between annual meetings of the Section, may fill vacancies in its own membership or in the offices of Secretary or Section Delegate, and, in the event of a vacancy in both the office of Chairman and Vice-Chairman, then in the office of Chairman. Members of the Council and officers so selected shall serve until the close of the next annual meeting of the Section, except in the case of the Section Delegate, who shall serve for the remainder of the term.

Article VI, Section 7 (New) is adopted as follows:

Section 7. The Council shall hold two regular meetings each year, the first to be held in connection with the mid-year meeting of the House of Delegates, and the second to be held prior to the annual meeting of the Section. Special meetings of the Council may be called upon reasonable notice by the Chairman with prior approval of a majority of the Council, and shall be so called upon written request by a majority of the Council.

Article VI, Section 8 (New) is adopted as follows:

Section 8. If any elected member of the Council shall fail to attend two successive meetings of the Council, the office held by such member shall be automatically vacated, and the vacancy shall be filled as provided in Section 3 of this Article and in Section 4 of Article III.

Proposals for Future Program

The Section meeting adopted the following three motions related to this subject:

That the Council designate two new committees on (a) membership and (b) information and education, in place of existing committees on Section Development and Publications.

That the Council consider the desirability of an annual spring or fall meeting of the Section.

That a proposed statement * by Mr. Kintner in support of these proposals be published in the Bulletin.

Section Resolutions Adopted by the House of Delegates

The above quoted Section Resolution on "Labor" was adopted without change in text by the House of Delegates at its 1957 annual meeting.

* The text of this statement is published on page 23.

REPORT OF THE NATIONAL COMMITTEE ON LEGISLATIVE MATTERS

The first session of the 85th Congress adjourned on August 30, 1957. Of the 316 bills enacted into public laws during that session, only a handful can be said to be of interest to Section members —and, at best, these are of only tangential importance in the field of administrative law.[1] This is not to say, however, that there has been any lack of congressional activity in legislation directly and substantively of interest to Section members. Of the 14,013 measures introduced in the first session of the 85th Congress, approximately 100 bills were selected for distribution and formal assignment to Section Committees. These bills will, of course, carry over to the second session of the Congress which convenes on January 8, 1958.

The purpose of this report is to highlight the current legislative status of those bills of major importance referred by this Committee to Section Committees for study and consideration. Unless otherwise indicated, none of these bills were enacted into law during the first session of the 85th Congress.

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[1] These would include: Pub. L. No. 36 (To facilitate the regulation, control and eradication of plant pests); Pub. L. No. 56 ("Veterans' Benefit Act of 1957"); Pub. L. No. 124 (Amends Section 218(a) of the Interstate Commerce Act to require contract carriers by motor vehicle to file their actual rates and charges); Pub. L. No. 133 ("Airways Modernization Act of 1957") See New Agency Developments, p. 28 infra.; Pub. L. No. 135 (Increasing penalties for violation of certain safety and other statutes administered by the Interstate Commerce Commission); Pub. L. No. 150 (Amends Section 20 (b) of the Interstate Commerce Act to require the Commission to consider in stock modification plans the assents of controlled or controlling stockholders); Pub. L. No. 163 (To revise the definition of contract carrier by motor vehicle as set forth in Section 203 (a) (15) of the Interstate Commerce Act); Pub. L. No. 166 (Amends Section 401(e) of the Civil Aeronautics Act of 1938); Pub. L. No. 172 (Provides for compulsory inspection of poultry by the Agriculture Department); Pub. L. No. 176 (Amends Section 410 of the Interstate Commerce Act to change the requirements for obtaining a freight forwarder permit); Pub. L. No. 200 (Terminates the Veterans' Education Appeals Board); Pub. L. No. 226, Pub. L. No. 227, Pub. L. No. 228 and Pub. L. No. 229 (Each amends title II of the Social Security Act); Pub. L. No. 246 (Amends Section 22 of the Interstate Commerce Act); Pub. L. No. 250 (Amends Section 304(d) of the Federal Food, Drug, and Cosmetic Act); Pub. L. No. 309 (Amends Section 214 of the Interstate Commerce Act to prevent the use of arbitrary stock values to evade Commission jurisdiction); Pub. L. No. 315 (Creating the Commission on Civil Rights) See New Agency Developments, p. 28 infra.; and Pub. L. No. 316 (Amending the Immigration and Nationality Act).

A. Agriculture Legislation

During the first session of the 85th Congress, the Agriculture Committee of the Section screened and reported on a number of bills referred to it. It devoted particular attention to H.R. 6814 (and companion bill S. 1747) which was enacted into law (Pub. L. No. 172) as the "Poultry Inspection Act" on August 28, 1957.

Since the report of the Agriculture Committee to the Section at the July meeting (9 Ad. Law Bull. 203), there have been referred to it S. 2727 (dealing with fluid milk standards) and H.R. 8324 (which would create an Agriculture Research and Industrial Board). To date, there has been no congressional action with respect to these bills.

B. Aviation Legislation

During the second session of the 85th Congress, the National Committee will be called upon to implement the action taken by the Section at the July meeting with respect to S. 1423 which passed the Senate on April 4, 1957 (see S. Rep. No. 119). Section 1 of that bill, which is now pending before the House Committee on Interstate and Foreign Commerce, would amend Section 801 of the CAA Act by restricting the President's power to overrule CAB certification actions to foreign air transportation cases involving national defense or foreign policy. On July 12, 1957, the Section adopted the following resolution:

Resolved, That the American Bar Association supports enactment by Congress of legislation consistent with the principles of section 1 of S. 1423, 85th Cong.

H.R. 6418 and S. 1749 would amend Section 610(a) of the CAA Act to provide civil penalties in certain cases. In aid of the Association's position that legislation authorizing the imposition of money penalties by federal agencies should be drawn with particular safeguards, the National Committee has requested to be advised when congressional hearings are to be held on these bills. Both H.R. 6418 and S. 1749 are pending in committee.

C. Communications Legislation

There have been referred to the Section's Committee on Communications for study and report H.R. 9115 (dealing with censorship of broadcasting, television, etc.) and S.J. Res. 106 (a joint

resolution to establish a commission to investigate the utilization of the radio and television frequencies allocated to agencies of the federal government).

Additionally, the National Committee has requested an opportunity to be heard before the appropriate congressional committees with reference to H.R. 5045, H.R. 6748 and S. 1577, all of which would amend the penalty provisions of the Communications Act of 1934.

D. Food and Drug Legislation

The Section's Committee on Food and Drugs has before it a score of bills introduced in the last session of Congress relating to chemical food additives and amendatory of the Federal Food, Drug, and Cosmetic Act (H.R. 366; H.R. 6747; H.R. 7100; H.R. 7700; H.R. 7798; H.R. 8390; H.R. 8629; H.R. Res. 311; etc.). These bills are pending before the House Committee on Interstate and Foreign Commerce.

E. Gas and Electric Power Legislation

Since the July meeting of the Section in New York, H.R. 8525 and S. 2847 which would amend, respectively, certain provisions of the Natural Gas and Federal Power Acts, have been referred to the Section's Committee on Gas and Electric Power. H.R. 8525 was reported out of the House Interstate and Foreign Commerce Committee on July 17, 1957, and is now pending on the House calendar. No congressional action has been taken on S. 2847.

F. Immigration and Nationality Legislation

To mid-June 1957, about 160 general bills were introduced proposing changes in the Immigration and Nationality Act and related legislation. Of these, only one was enacted into law—Pub. L. No. 316, approved September 11, 1957.

Among the more important pending bills are S. 1006 and H.R. 4205, identical bills to effectuate the administration program and H.R. 3364, an omnibus bill introduced as a complete substitute for the Immigration and Nationality Act.

The Immigration Subcommittee of the House Judiciary Committee will hold hearings toward the end of January. The Section has arranged to be heard at that time. There are six resolutions on immigration and nationality which the Section has

approved, four in 1955 and two in 1957. The latter two resolutions have not yet been approved by either the House of Delegates or the Board of Governors. It is not expected that the testimony of the Section's representatives before the Immigration Subcommittee will be heard until the conclusion of the Atlanta meeting.

G. Interstate Commerce Act Legislation

Of the some 20 bills enacted into Public Laws during the first session of the 85th Congress and which touch the areas in which administrative law practitioners work, seven amend statutes administered by the Interstate Commerce Commission.

H. Labor Legislation

Of the many bills referred to the Section's Committee on Labor during the first session of the 85th Congress, particular attention was devoted to S. 1723 (and companion bill H.R. 6432). This bill would amend Section 6(a) of the National Labor Relations Act to permit state courts and agencies to assert jurisdiction over labor disputes affecting interstate commerce if the NLRB would decline to assert jurisdiction over such disputes on the ground that the effect on commerce is not substantial. A bill to accomplish the identical purpose by amendment to Section 13 of the APA (S. 1933) was studied by the Section's Committee on the Administrative Procedure Act.

On July 13, 1957, the Section adopted the following resolution:

Resolved, That the American Bar Association supports the enactment of legislation or the taking of appropriate administrative action which will provide a remedy for the administrative inaction of the National Labor Relations Board described.

This resolution was thereafter approved by the House of Delegates.

When Congress reconvenes in January of 1958, hearings will be held on H.R. 6432 before the House Committee on Education and Labor. Arrangements have been made for a Section representative to appear at those hearings.

I. Natural Resources Legislation

The National Committee recently referred to the Committee on Natural Resources H.R. 8187 which would create a United States Department of Mineral Resources and prescribe the func-

tions thereof. This bill, now before the House Committee on Government Operations, has not to date been the subject of any congressional hearings.

J. Mail Detention

On August 28, 1956, the Section by resolution recorded its opposition to Section 2 of Pub. L. No. 821, approved July 27, 1956, relating to the detention of mail for temporary periods in certain cases (see 9 Ad. Law Bull. 240-241). H.R. 4383 would accomplish this result. The Section has already recorded its support of H.R. 4383 with the House and Senate Committees on Post Office and Civil Service.

K. Public Contract Legislation

There have been referred to the Section's Committee on Public Contracts H.R. 7168 and S. 2300, identical bills which would prescribe policy and procedure in connection with construction contracts made by executive agencies. H.R. 7168, creating the Federal Construction Contracts Procedure Act, passed the House on June 24 (see H.R. Rep. No. 434). This bill was thereafter reported out favorably by the Senate Judiciary Committee and is now pending on the Senate calendar.

The Section's Committee on Public Contracts is drafting legislation to implement the Association's recommendation that the Board of Contract Appeals be given the power to subpoena witnesses and administer oaths.

L. Securities Legislation

During the first session of the 85th Congress, a series of bills were introduced proposing amendments to the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. These include H.R. 9326, H.R. 9327, H.R. 9328, H.R. 9329, H.R. 9330, H.R. 9387 and S. 2796, all of which have been referred to the Section's Committee on Securities. To date there has been no congressional action on these bills.

M. Passport Review Procedure

H.R. 5612 would amend the APA by adding a section on passport review procedure. This bill is identical with that of H.R.

9991 of the 84th Congress which was opposed by the Association. No action has been taken by the House Judiciary Committee on H.R. 5612.

N. Trade Regulation Legislation

The House Judiciary Committee in May reported out H.R. 7698, the pre-merger notification bill. The bill is now pending before the House Rules Committee.

O. Fee Limitations

At the 1957 mid-year meeting, the Section was authorized to advance legislation to remove arbitrary and unreasonable limitations on fees for legal services to be rendered before administrative agencies. The Committee on Representation Before Agencies is in the process of preparing such legislation and expects to complete the drafting job within the coming year.

P. Record on Review

The Section at the mid-winter meeting was authorized to advance legislation providing for abbreviation of records on review, as well as uniformity of practice throughout the several circuits. H.R. 6788, supported by the Section before the House Judiciary Committee, would accomplish this result. H.R. 6788 passed the House on August 5 and is now pending before the Senate Judiciary Committee.

Q. Hearing Examiners

Implementing Association authorization, the National Committee secured the introduction of H.R. 4921, H.R. 8387 and S. 1550 which amend Section 11 of the APA by establishing the compensation of examiners at Grade GS-18 and at the same time establishing the compensation of the Judicial Officer of the Department of Agriculture at the same annual rate as that authorized for the Assistant Secretary of Agriculture. The House and Senate Committees to which these bills have been referred are now receiving agency reports on this legislation.

R. Service of Process

In October, 1956, the Board of Governors adopted a resolution recommended by the Section which would require notice or serv-

ice upon the attorney of record of any person in any administrative proceeding. S. 932, H.R. 3349 and H.R. 3350 would accomplish this result (Section 407). The Section's Vice-Chairman has invited, through the form of a questionnaire, agency reaction to the aforementioned resolution. An analysis of agency replies to the questionnaire is contained in 9 Ad. Law Bull. 259-263.

S. Reasonable Notice—Interlocutory Relief

H.R. 6789, supported by the Section, provides for "reasonable" notice (instead of the present requirement of five days' notice) on applications to the United States Court of Appeals for interlocutory relief against the orders of certain administrative agencies. After a favorable report by the House Judiciary Committee (H.R. Rep. No. 533), the bill passed the House on June 17. The Section has recorded its support of H.R. 6789 with the Senate Judiciary Committee where it is now pending.

T. Congressional Committee on Administrative Procedures

The Association, by appropriate action, has recommended that Congress establish such a committee with specified duties outlined. H.R. Res. 119 in the current Congress would establish a House Committee on Administrative Procedures and Practice. This is a re-introduction of H.R. 462 on which the Rules Committee of the House of Representatives held hearings on May 22, 23, 24, 1956. At that time, leaders of the American Bar Association testified in support of this legislation. H.R. Res. 119 is now pending before the House Rules Committee.

U. Administrative Procedure Act—Public Information

H.R. 7172, H.R. 7173, H.R. 7174 and S. 2148, identical bills which would amend Section 3 of the APA "to clarify and protect the right of the public to information," were all introduced during the last congressional session. The amendments proposed in these bills follow, word for word, Section 1002 of the ABA Special Committee's final draft of the Proposed New Code of Administrative Procedure (reproduced in 9 Ad. Law Bull. 185-186).

The aforementioned bills have been referred to the Section's Committee on the Administrative Procedure Act. That committee has been requested to report on these bills. To date, no congres-

sional action has been taken on these bills which are now pending before the House and Senate Judiciary Committees.

V. Judicial Review

H.R. 272 would provide for judicial review of decisions of the Administrator of Veterans' Affairs. On July 13 the Section resolved to support H.R. 272 with a recommended amendment which would substitute review in the appropriate United States district court for review in the appropriate court of appeals.

H.R. 272 is now pending before the House Judiciary Committee.

W. Representation

H.R. 261 (superseded by H.R. 276), H.R. 3543, and H.R. 9144, referred to the Section's Committee on Representation before Administrative Agencies, would permit members of the bars of the highest state or federal courts to practice before all administrative agencies. No action has been taken by the House Judiciary Committee on these bills.

ARNOLD LEVY, *Chairman*

PROPOSALS FOR FUTURE PROGRAM

Incident to the Section adopted resolutions on "changes in committees" supra, the Section meeting approved publication of the following statement by Council-member Earl W. Kintner in support of the prepared future program.

Statement in Support of Motions

The above motions are submitted by me as a member of the Section for the purpose of stimulating the membership thinking on the Section's future role and activities. For this reason I did not submit the proposals to the Council of which I am a member.

Past Activities

Under Chairman Harold L. Russell's leadership the Section has had one of its best years. Membership has increased from 1,193 eighteen months ago to approximately 2,000 today. Most of the committees have been active. More importantly, the Chairman has taken several steps to better inform the whole membership of the Section's work and to insure that all members be afforded more opportunity for personal participation in Section decisions and activities. This last need was urgent and perhaps attention to it was long overdue.

In prior years the Section's affairs have been in the hands of a relatively small group of most capable people. Thus the Section has given to the Association such leaders as Donald C. Beelar, Robert M. Benjamin, J. D. Bond, John W. Cragun, John B. Gage, Reuben Hall, Charles B. Nutting, Ashley Sellers, E. Blythe Stason, and others. They are positive men with a persistent program for legislative reform. Under their leadership the Section has been relatively small but most active in pressing legislative proposals.

My suggestions are directed to increased membership and to a broader information and education program. If these suggestions are found to be sound and if they are adopted by the Section, I am convinced that more members will participate more actively in the Section's affairs and that attendance at our annual meeting will materially increase.

Membership

In eighteen months, as I have mentioned, the Section's membership has increased from 1,193 to approximately 2,000. This has been accomplished by a tireless personal solicitation program led by Harry Frank, with Harold Russell's encouragement this year, and by a broadside membership letter campaign which last year's Chairman, Rufus Poole, authorized me to undertake in his name and which Harold Russell and the Council this year have fully supported. This type of solicitation probably has accounted for up to 700 new members. The personal solicitation program, continuation of which is absolutely essential, probably has resulted in up to 150 new members.

Even so, Harold Russell has compiled a list of 187 members who have apparently left the Section during the past eighteen months either through death or resignation. This seems an unusually high rate of attrition (Chicago reports 11 cancellations and 3 deaths since January 1957, apparently inaccurate figures as to Section membership loss). The personal solicitation membership drive, to which Harry Frank, Harold Russell, Kenneth Teasdale, William Blum, and other Section officers and committee chairmen have devoted so much effort, thus has barely exceeded Section membership losses during the period. As a comparison, the Section of Antitrust Law with approximately 3,300 members has lost 9 members by death and 18 by resignation during the past six months.

I am convinced that we will continue to lose members at a high rate unless we broaden the Section's educational program, its activities and its services to the general membership. However, we also must continue our recruitment efforts. Since the Committee on Section Development has been largely concerned with membership activities, I suggest that we designate in its stead a Committee on Membership with sole responsibility for such activities, periodically reporting to the Chairman and to the Council. This need not deprive us of Charles Effinger Smoot's incomparable Section social activities. It would better recognize a constant, necessary Section activity and center responsibility for its continuation.

Information and Education

Our Section's Bulletin is unique among American Bar Association publications. The periodic analysis of pending legislation and leading case law developments are particularly outstanding, due

to the genius and industry of Professor Bernard Schwartz. By all means let us continue these services to the profession. The legislative information and analysis especially are necessary adjuncts to the Section's legislative program.

The Section, as I understand its role in the Association, primarily must devote its activities to the procedural aspects of administrative law and concerns itself only with substantive aspects of law not assigned to other specialized sections such as Antitrust Law, Corporation, Banking and Business Law, Labor Relations Law, Public Utility Law, and Taxation. Some areas of substantive law thus remain to the Section. Nor is the line between procedural and substantive law sharply defined. Even so, the Section of Administrative Law is said to be one of the Association's "bread-and-butter" sections, in contrast to the "pro bono publico" sections: Bar Activities, Criminal Law, Junior Bar Conference, Judicial Administration, Legal Education and Admissions to the Bar (see ABA Chairman's Handbook).

Some of us believe that the Section provides far too little bread-and-butter information and assistance to the majority of its members, most of whom are not full-time administrative practitioners, but belong to the Section with expectation of obtaining such assistance. We do not quarrel with the idea that the Section should have an active legislative program; we do think that the program should be balanced with a more active information and educational program in the administrative law field, beamed at private and government practitioners. Also, some of us on the government side of the counsel table think that quite as much improvement of federal and state administrative law could result from a thoughtful and fair Section program of suggestions for voluntary improvement of the process as from long-range, sometimes bitter, programs of legislative reform. We believe that a voluntary improvement program might appeal to a larger number of Section members than is the case with the Section's involuntary legislative proposals. To cite an example with which I am familiar, a small working subcommittee of the Section of Antitrust Law under the chairmanship of Curtis C. Williams, Jr., of the Cleveland bar, recently labored for nearly a year preparing a draft of suggested rules of practice for the Federal Trade Commission. This draft was of material assistance to the FTC staff committee which in turn formulated a draft of rules of practice for submission to the agency heads.

For reasons outlined above, I suggest that the currently inactive Committee on Publications be replaced by a Committee on Information and Education which might adopt a program along the following lines:

(a) Plan information and educational programs for Section meetings, including perhaps a one-day annual Spring or Fall meeting in Washington. Subject matter for such programs, which could be systematically planned as to general content two or three years in advance, might include: basic procedure and practice before various administrative agencies; problem areas in practice before particular administrative agencies, pro and con; current legal developments involving practice before administrative agencies; applicability of the Administrative Procedure Act to the various agencies; improvement of procedures of various agencies, pro and con; and administrative practice in the states.

(b) Annually or semi-annually publish as proceedings of the Section carefully written and footnoted papers which were informally presented at the programs suggested above. These volumes, which need not be expensively packaged, apart from their current practical usefulness to Section members, would constitute one of the Section's permanent contributions to legal learning and developments in the field of administrative law. Eventually there would be built up a backlog of valuable reference material for future students and practitioners of the law.

(c) Invite as speakers and writers members of the Section and others who are expert in particular areas of administrative law, or who are willing to do thoughtful research in particular problem areas and to make it available to their fellows through this medium. Program participants should be balanced as to government and non-government lawyers, thus creating better understanding of mutual problems and meeting the Section's long felt need for more participation by government lawyers.

(d) Cooperate with other bar groups having common interests, such as the Administrative Law Section of the District of Columbia Bar Association, the Administrative Law Committee of the New York State Bar Association, and the Administrative Law Committee of the Federal Bar Association.

REPORT ON ORGANIZATION OF ABA SPECIAL COMMITTEE ON ADMINISTRATIVE AGENCY APPOINTMENTS

At its meeting in New York in July, the Board of Governors of the American Bar Association reported to the House of Delegates that it had taken the following action:

After having given careful study to the subject through a special subcommittee, the Board authorized the President to appoint a Special Committee of the Association on Administrative Agency Appointments, consisting of eleven members, one from each federal judicial circuit and one from the District of Columbia, which committee is authorized, on behalf of the Association, to promote the nomination and confirmation of competent lawyers as members of federal independent agencies and commissions and to oppose the nomination and confirmation of lawyers deemed by it to be not sufficiently qualified. Members of the House will note that the functions of this new committee parallel those committed to the Standing Committee on the Federal Judiciary, with respect to appointment of judges of courts of the United States, under Article X, Section 7(k) of the By-Laws.

This represents another recognition of the American Bar Association's interest in appointments to the many quasi-judicial positions in the federal government. Attention must be directed to the fact that this Committee, as well as the Committee relating to the federal judiciary, acts only upon the request of the Executive; that it has no legal status; that in some cases it may not be called upon, since the proposed appointee may not be a lawyer; and that the considerations with reference to appointments to administrative agencies may be quite different than those with relation to the federal judiciary. But in those cases in which the proposed appointee is a lawyer, it is hoped that the Committee may be of some service to the executive branch in expressing the opinion of the bar as to the qualifications of the person under consideration.

The committee appointed by President Rhyne is as follows:

	Clarence A. Davis, Washington, D. C., *Chairman*
1st Cir.	Reuben Hall, Boston, Massachusetts
2nd Cir.	Theodore Iserman, New York, New York
3rd Cir.	John B. Prizer, Philadelphia, Pennsylvania
4th Cir.	Justin Moore, Sr., Richmond, Virginia
5th Cir.	Harold L. Russell, Atlanta, Georgia
6th Cir.	William H. Nieman, Cincinnati, Ohio
7th Cir.	Anan Raymond, Chicago, Illinois
8th Cir.	John Gage, Kansas City, Missouri
9th Cir.	James T. Finlen, Butte, Montana
10th Cir.	Ross L. Malone, Roswell, New Mexico

NEW AGENCY DEVELOPMENTS

Airways Modernization Act of 1957 [1]

This enactment creates the Airways Modernization Board. The Board is composed of three members, a Chairman appointed by the President, the Secretary of Defense and the Secretary of Commerce. The Chairman's appointment is subject to Senate confirmation, and either of the Secretaries may designate an officer of his department to act in his stead as a member of the Board with respect to any matter.

The Board is a temporary agency—the Act provides that its activities shall terminate June 30, 1960. The Board is charged with the duty to develop, modify, test and evaluate systems, procedures, facilities and devices, as well as define the performance characteristics thereof, to meet the needs for safe and efficient navigation and traffic control of all civil and military aviation except for those needs of military agencies which are peculiar to air warfare and primarily of military concern.[2] The Board is given authority to employ a staff, to appoint advisory committees, to enter into contracts without regard to Section 3648 of the Revised Statutes [3] and to use the services of other federal agencies.

All decisions of the Board must be by majority vote with the exception of its powers under Section 4. Section 4 empowers the Board to transfer to itself any function of the Departments of Defense and Commerce or of any officer or organizational entity thereof which relate primarily to selecting, developing, testing or evaluating systems, procedures, facilities or devices for safe and efficient air navigation and air traffic control. Decisions under this section must, in addition to being unanimous, have the approval of the President.

Section 2(b) of the Act directs the Board, before selection of any

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[1] S. 1856, 85th Cong. 1st Sess. (Pub. L. No. 133, August 14, 1957); 71 Stat. 349 (1957), 49 U.S.C.A. §§ 1201-1205.

[2] The Board is authorized to determine whether it or the appropriate military agency shall have responsibility when there is any substantial question as to whether a matter is of primary concern to the military. § 2(b).

[3] Section 3648, 31 U.S.C. § 529, prohibits the advance of public money for services or goods prior to their being received, unless authorized by law.

system, procedure, facility or device,[4] to effect coordination with the Civil Aeronautics Board and the Federal Communications Commission to assure that full consideration is given to the statutory responsibilities of these agencies.

EDITOR'S NOTE: Since the Act does not establish any rules of procedure for the Board, the relevant provisions of the Administrative Procedure Act [5] would be presumptively controlling.

CIVIL RIGHTS ACT OF 1957 [6]

This enactment, among other things, creates the Commission on Civil Rights. The Commission is composed of six members appointed by the President—not more than three members may be of the same political party. The members' appointments are subject to Senate confirmation, and the President may designate one of the members as Chairman and one as Vice Chairman. Four members of the Commission constitute a quorum.

Section 102 establishes the rules of procedure for the Commission. The rules require an opening statement on the part of the Chairman as to the subject matter of the hearing. Witnesses before the Commission must be furnished a copy of the Commission's rules, and are entitled to be accompanied by counsel. The Chairman is authorized to punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings. When the Commission finds that any evidence or testimony at a hearing may tend to defame, degrade or incriminate any person, it must receive such evidence or testimony in executive session; afford such person an opportunity voluntarily to appear as a witness; and receive and dispose of requests from such person to subpoena additional witnesses. No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Unauthorized disclosure is subject to criminal sanctions.

In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is made the sole judge of the pertinency of

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[4] It should be noted that nothing in the Act purports to diminish the responsibility of the Department of Commerce for the installation, maintenance and operation of the federal airways system.

[5] 60 Stat. 237 (1946), as amended, 5 U.S.C.A. § 1001 *et seq.*

[6] H.R. 6127, 85th Cong. 1st Sess. (Pub. L. No. 315, September 9, 1957); 71 Stat. 634 (1957), 42 U.S.C.A. §§ 1975-1975e.

evidence and testimony adduced at its hearings. A witness may obtain a transcript of his testimony upon payment of the cost thereof or, if the testimony was given at an executive session, when authorized by the Commission.

The Commission may not issue any subpoena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the person subpoenaed at a hearing to be held outside of the state, wherein the witness is found or resides or transacts business.

The Commission is empowered to investigate allegations in writing under oath or affirmation that citizens are being deprived of their right to vote by reason of their color, race, religion or national origin. The Commission shall also study and collect information concerning legal developments which constitute a denial of equal protection of the laws under the Constitution, and appraise the laws and policies of the federal government with respect to equal protection of the laws under the Constitution.

The Commission is directed to submit interim reports to the President and Congress at such times as either the Commission or the President shall deem advisable. A final report and recommendations must be submitted to the President and Congress not later than two years from the date of the Act—sixty days after such submission the Commission shall cease to exist.

The Commission is authorized to employ a staff, to appoint advisory committees, and to consult with representatives of state and local governments, and private organizations. The Commission may not accept or utilize services of voluntary or uncompensated personnel. The Commission and members of advisory committees are exempted from the operation of the federal conflict-of-interest laws.

The Commission, or on the authorization of the Commission, any subcommittee of two or more members, at least one of which must be of each major political party, may hold hearings and act at such times and places as deemed advisable. The Chairman shall receive and the Commission shall dispose of requests to subpoena additional witnesses. Subpoenas may be issued over the signature of the Chairman or of a subcommittee, and may be served by any person designated by the Chairman.

In case of contumacy or refusal to obey a subpoena, the Attorney General of the United States is authorized to apply to a United States district court or a United States court of any territory or

possession, wherein the inquiry is being held or within whose jurisdiction the guilty party is found or resides or transacts business, for an order requiring obedience. Failure to obey such an order of the court may be punished by the court as a contempt thereof.

GSA Advisory Service and Regional Information Program

The General Services Administration, which, among other things, buys common-use type items for the federal government and strategic and critical materials for the national stockpile, has organized a unique regional business services program designed to advise and assist business concerns interested in participating in government procurement and disposal contracts.

Business advisory and related services are made available within the General Services Administration from "Business Service Centers" located in several cities throughout the United States. At present there are 13 such centers, located at Boston, New York, Washington, D. C., Atlanta, Chicago, Kansas City, Dallas, Fort Worth, Denver, Seattle, Portland, Oregon, San Francisco and Los Angeles. A number of additional centers are in process of being established in other major industrial areas.

These centers were established essentially for the purpose of assisting firms desiring (1) to sell their products and services to the federal government, (2) to purchase government surplus property, both real and personal, (3) to obtain contracts for the construction, renovation, alteration and repair of public buildings, (4) to lease office space and other facilities to the government and (5) to participate in the strategic and critical materials stockpiling program.

While the existing Business Service Centers are primarily central contact points for persons seeking to do business with the General Services Administration, they also function as government-wide centers, particularly with respect to providing federal specifications to bidders and advisory and referral services. These services are available to all business concerns on an equal basis, but special emphasis is given to facilitating and extending the participation of small business firms in government contracts.

Typical of the informational and advisory services provided by GSA Business Service Centers are the following:

1. Information about and ready access to current bidding opportunities, specifications, contract terms and conditions and names and locations of government procurement officials having responsibility for requirements and contracting;

2. Advice concerning federal procurement and disposal policies and practices;

3. Maintain public displays of current bid invitations, synopses of proposed procurements and sales and GSA bid and contract awards data;

4. Advice and guidance concerning methods by which new and improved products may be introduced into the government supply system;

5. Explain objectives and procedures for preferential procurements such as small business set-asides and surplus labor area set-asides;

6. Provide data, to the extent available, as to quantities and prices of products previously purchased;

7. Furnish names and locations of current prime contractors from whom subcontracts might be obtainable;

8. Furnish to businessmen copies of, or information where to obtain, supply catalogs, supply schedules, specifications and indexes, federal regulations and procedures, and standard contract forms and provisions; and

9. Assist firms to prepare and file bidders mailing list applications.

Also these Centers provide a valuable referral service for the convenience of representatives of business concerns in contacting personally a buyer, engineer or other official within the General Services Administration, or for arranging meetings with officials of another federal agency.

Pages 33-56 of this issue have been omitted from the reprinted edition. Those pages are the index to v. 1-9 which has been superseded by the index to v. 1-19.